

**BEST AVAILABLE COPY****REMARKS**

Claims 1-10 are now pending in the application.

Claims 1-10 stand rejected under 35 U.S.C. 112, second paragraph. Claims 1-10 stand rejected under 35 U.S.C. 103(a) as unpatentable over Leijonhufvud (20040076282) when taken in view of Ingrassia et al. (US 6421068). Applicant, respectfully, traverses both grounds of rejection of the currently pending claims for the reasons which follow:

**Rejection under 35 U.S.C. 112, second paragraph:**

The Examiner has rejected particularly claims 1 and 10, as well as claims 2-9 which depend thereon in the use of the phrases:

Claim 1:

the target address(es) (lines 5-6)

the respective target address(es) (line 10)

the telephone concerned (line 16)

the holder of the telephone (line 18)

Claim 10:

the target address(es) (line 4)

the identify of the target address(es) (line 5)

the respective target address(es) (line 11)

the telephone concerned (line 17)

the holder of the telephone (lines 19-20).

---

Page 2 of 10 1:07 PM 1/24/2007. Response filed under 37 C. F. R. §1.111. (Applicant: Warren Gregory Tobin. Application Serial Number: 10/622,638. Title: Communication means. Filing Date: 07/21/2003. Art Unit: 2645. Examiner: Gerald Gauthier. Confirmation Number: 4576)

The Examiner urges that these phrases lack antecedent basis in the claims.

In response, applicant would initially note that these phrases, as used in the present claims, make use of the term "the" rather than "said" and the use of this term with a noun is not necessarily intended to reference a previously mentioned term. The term "the" is often used preceding a noun with no intent to refer back to a previously mentioned item. Further, applicant would urge that a claim must be construed in light of the supporting description, not in a vacuum, and must be read as it would by a person skilled in the art (in this case probably a telecommunications software engineer). We respectfully submit that it is not realistic to think that a skilled telecommunications software engineer, with the benefit of all his or her training and experience, and with the benefit of the supporting description, could not understand the above phrases or the claims as a whole.

Referring to "the target address(es)", whenever one makes a phone call there is a target address for it. It is at the very least implicit in the very notion of a call and thus does not need elaboration or explanation. It is hard to imagine how a telephone text call could be made without there being directed to a target address.

Referring to "the telephone concerned" we again submit that it is very hard to see how it could present any problem of understanding to a skilled and experienced telecommunications software engineer. In this case the "telephone concerned" is very clearly the telephone which initiated the call at step "a)". It is simply not logical to think that the "telephone concerned" could be anything else.

Referring to "the holder of the telephone" this is very clearly the person, etc, that owns or possesses, as the case may, the telephone that initiated the call. Again, we submit that every phone that makes a call has an owner or possessor and it is hard to see how the phrase could be construed in any other way.

Thus all phrases noted by the Examiner are proper in the setting that they are used. As such, they are not indefinite and create no confusion in the scope and content of the pending claims.

Therefore, applicant would, respectfully, urge that the Examiner reconsider and withdraw the present objection to claim 1.

**Rejection under 35 USC 103(a):**

At pages 2-7, the Examiner sets forth the rejection of claims 1-10 under 35 USC 103 (a) as unpatentable over Leijonhufvud (20040076282) when taken in view of Ingrassia et al. (US 6421068).

The two references can be summarized as follows:.

**US 2004/0076282 (to Leijonhufvud)**

Paragraphs 7-19 of US 2004/0076282 (to Leijonhufvud) teach a system for avoiding waiting in line for service in a retail outlet or similar. A consumer obtains a ticket from a ticket machine near a retail outlet and the ticket indicates his or her place in a queue for service at the outlet. The ticket, or a display on the machine, gives an estimation of the time that the consumer will be served at the outlet. The consumer may send an SMS text message to a control device to register the ticket and set up a

surveillance call from the control device when the time for service at the outlet is approaching. The control device then delivers a message shortly before the time for service to let the consumer know that the retail outlet is almost ready to serve that consumer. Leijonhufvud does not say what type of call the control device makes to the consumer other than to indicate it is telephonic.

Paragraphs 36 and 37 of Leijonhufvud teach that in some embodiments a consumer may reserve a ticket for service at the retail outlet. To do this the consumer uses a fixed telephone or a cell phone to call the control device. Leijonhufvud does not say that the reservation is made by an SMS text message or similar. The reservation is allocated a code by the control device which the consumer can key into the ticket machine to get a queue ticket when he or she arrives at the retail outlet shortly before the allotted time for service. Leijonhufvud does not say that the reservation details are communicated from the control device to the consumer by way of an SMS text message or similar.

Paragraph 52 of Leijonhufvud says that the surveillance call to the consumer (ie the call saying that the retail outlet is almost ready to serve the consumer) can be a speech message or a text message.

It is notable that Leijonhufvud does not teach any application to a call centre. It is only applicable in the context of queue ticket machine at retail outlet or similar.

**US 6,421,068 (to Ingrassia)**

Ingrassia describes a method of collecting textual information in connection with a CTI server. It does not at all mention receiving text messages from telephones or problems

experienced by callers waiting for service from a call centre. The only relevance of Ingrassia is that it describes a call centre per se.

### **The Legal Position**

We remind the examiner that during prosecution, the burden is initially upon the examiner to make a prima facie case of obviousness, and, if he or she does, the burden shifts to the applicant to rebut it. The examiner makes a prima facie case if the following conditions are met:

- 1) there is a suggestion within the cited references or the knowledge of a person of ordinary skill in the art to modify or combine the references to achieve the claimed invention;
- 2) there was a reasonable expectation of success; and
- 3) the prior art teaches all claim limitations. An applicant can rebut this by showing, among other things, that a person of ordinary skill in the art would not have used the cited prior art to make the invention because
  - (a) prior art taught away from the solution reached in the invention, or
  - (b) there was no suggestion to combine the cited art, or
  - (c) not all claim limitations are taught by prior art, or

---

Page 6 of 10 1:07 PM 1/24/2007. Response filed under 37 C. F. R. §1.111. (Applicant: Warren Gregory Tobin. Application Serial Number: 10/622,638. Title: Communication means. Filing Date: 07/21/2003. Art Unit: 2645. Examiner: Gerald Gauthier Confirmation Number: 4576

(d) there was no reasonable expectation of success

### Teaching Away

In the last response an affidavit was filed documenting a teaching away from the use of text messages in a call centre environment. It highlights problems with the technology at the priority date and a general industry reluctance to work with such messaging. The examiner is referred to that affidavit and the previous submissions made in relation to it. We ask that the examiner please read that affidavit to refresh himself in relation to this response. We would also comment it is interesting that the only one of the two citations (Ingrassia) which relates to a call centre does not mention SMS text messages from telephones at all.

Additionally, in the present case combining the two references would not give the invention as claimed. For example the combination would give a retail ticket queue machine system plus a call centre. There is no obvious way to link these two to give what has been claimed. In *Graham v. John Deere* the court affirmed the concept that if the references taken in combination would produce a seemingly inoperative device such references teach away from the combination and thus cannot serve as a predicate for a prima facie case of obviousness.

### No Suggestion or Motivation to Combine

Leijonhufvud does not mention call centres as used in claim 1 and Ingrassia does not mention problems with queues or getting calls through to call centres. In light of this it is submitted that there is absolutely no motivation to combine the teachings of

the two documents.

**Not all Claim Limitations Taught by the Prior Art**

The following limitations are not present in either of the citations:

- i) Taking telephone text messages **at a call centre** (the control device 5 of Ingrassia is clearly not a call centre within the meaning and context of the present application - a proper purposive construction must be applied)
- ii) the identity of the target address(es) in each case being **recorded in the text centre means against a telephone call centre or telephone call centres,**
- iii) sending the text message calls to the **call centre or call centres corresponding to the respective target address(es),**
- iv) in substantially each case the call centre concerned making the respective return **telephonic voice call at the time indicated**. (ie not prior to the time indicated)

In light of the above, and as all other claims which depend thereon and incorporate the same limitations as claim 1, the obviousness rejection fails to provide a level of evidence which would reasonably support the conclusion of obviousness reached.

**No Reasonable Expectation of Success**

As explained in the affidavit, there were serious concerns with text message technology at the priority date in that phone companies could not guarantee successful delivery of telephone text messages. There was accordingly no reasonable of success in respect of the invention of claim 1.

Thus, applicant would urge that Leijonhufvud relates to a completely different field to

which the present invention relates. The present invention, as described in the Specification, relates to a method of improving telephonic communications, which, in its preferred form, involves a call centre which receives and processes mobile phone text messages. The Leijonhufvud reference relates to a "Queue Number Surveillance" system. While the Examiner has been able to identify certain features which the two systems may be regarded as sharing, it remains that the systems described as very different and function in completely differ ways to accomplish completely different results.

Applicant would urge that the "control device" (5) referenced in paragraph 19 of the reference is not a call centre of the type described in the present disclosure and required by the present claims. The device of Ingrassia et al. does not provide, in the same type of system, information which would reasonably suggest modifying the system of Leijonhufvud in a manner which would lead to the present claimed invention.

Thus, applicant respectfully requests the Examiner to reconsider and withdraw the rejection of the mentioned claims as unpatentable over Leijonhufvud taken in combination with Ingrassia et al..

#### **Conclusion:**

In conclusion, applicant have presented arguments relating to both the ground of objection and the ground of rejection set forth in the Office action of October 24, 2006. Applicant, respectfully, requests that the Examiner reconsider these objections and rejections and find all claims allowable.



The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 CFR §§ 1.16-1.17 or credit any overpayment, to deposit account No. 50-3321. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, or otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-3321.

Respectfully submitted,

By: Sam Zaghmout

O. M. (Sam) Zaghmout Ph.D  
(Registration No. 51,286)

**Contact Information:**

Bio Intellectual Property Service (BIO IPS) LLC  
8509 Kemon Ct, Lorton, VA 22079, USA  
(703) 550-1968 (Voice/Fax), Fax: (703-550-0409)

---

Page 10 of 10 1:07 PM 1/24/2007. Response filed under 37 C. F. R. §1.111. (Applicant: Warren Gregory Tobin.  
Application Serial Number: 10/622,638. Title: Communication means. Filing Date: 07/21/2003. Art Unit: 2645.  
Examiner: Gerald Gauthier  
Confirmation Number: 4576

**This Page is Inserted by IFW Indexing and Scanning  
Operations and is not part of the Official Record**

**BEST AVAILABLE IMAGES**

Defective images within this document are accurate representations of the original documents submitted by the applicant.

Defects in the images include but are not limited to the items checked:

- ☐ BLACK BORDERS
- ☐ IMAGE CUT OFF AT TOP, BOTTOM OR SIDES
- ☐ FADED TEXT OR DRAWING
- ☐ BLURRED OR ILLEGIBLE TEXT OR DRAWING
- ☐ SKEWED/SLANTED IMAGES
- ☐ COLOR OR BLACK AND WHITE PHOTOGRAPHS
- ☐ GRAY SCALE DOCUMENTS
- ☒ LINES OR MARKS ON ORIGINAL DOCUMENT
- ☐ REFERENCE(S) OR EXHIBIT(S) SUBMITTED ARE POOR QUALITY
- ☐ OTHER: \_\_\_\_\_

**IMAGES ARE BEST AVAILABLE COPY.**

**As rescanning these documents will not correct the image problems checked, please do not report these problems to the IFW Image Problem Mailbox.**